IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 2631 of 2007
Date of decision, November 17, 2007

Khanauri Bus Service (Regd.) Khanauri, H.O. Khanauri, District Sangrur, (Punjab) through its Managing partner Gurnaib Singh son of Bachan Singh through Amardeep Singh son of Karnail Singh, Special power of attorney, resident of village Ballowal, Distt. Ludhiana.

..... Petitioner

Versus

1. The State Transport Appellate Tribunal, Punjab, SCO No. 175, Sector 38, Chandigarh.
2. The State Transport Commissioner, Punjab (exercising the powers of R.T.A. Patiala Jalandhar and Ferozepur) Jeewandeep Building, Sector 17, Chandigarh.
3. The Ambala Bus Syndicate Private Limited Ropar through its Director Ujjagar Singh son of Pal Singh.

..... Respondents

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR AND
HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Arun Jain, Advocate with
Mr. Amit Jain, Advocate
for the petitioner.

Mr. B. S. Chahal, Assistant Advocate
General, Punjab for respondent No.1 and 2.

Sh. Baldev Kapoor, Advocate
for respondent No.3.

****

Sham Sunder, J.

Through the instant petition, the petitioner has sought the issuance of a writ, in the nature of certiorari/mandamus for declaring the impugned order dated 14.2.2007 (Annexure P-7), passed by the State Transport Appellate Tribunal, Punjab as illegal, arbitrary and ultra vires of the provisions of the Motor Vehicles Act, 1988 as also of Articles 14 and 19 (1) (g) of the Constitution of India and for directing the respondents to allow the petitioner-firm,to continue operating the permit, already granted,

in its favour.

2. The petitioner is a partnership firm. Respondent No.2 invited applications for the grant of four Stage Carriage Permits, for plying two return trips daily, on Mohali-Ferozepur via Kharar, Morinda, Samrala, Ludhiana and Moga route, through a Notice dated 15.6.2003. In response thereto, as many as 91 applicants, including the petitioner, applied for the same. The petitioner had already paid upto date taxes, and no amount remained due against it. Out of 91 applicants, 37 applicants did not appear before respondent No.2, and their applications were rejected. After considering and hearing the remaining 54 applicants, respondent No.2, vide order dated 30.12.2004, reserved two Stage Carriage Permits, for Pepsu Road Transport Corporation. Out of the other two Stage Carriage Permits with half-return trip daily on Mohali-Ferozepur via Kharar, Morinda, Samrala, Ludhiana, Jagraon, Moga route, one was granted to the petitioner and the second to Avtar Singh, for a period of five years.

3. As many as ten appeals, one of which, by respondent No. 3, were filed against the order dated 30.12.2004. An application, during the pendency of the appeal was filed by respondent No.3 on 13.3.2006, to the Public Information Officer/DTO, Sangrur asking for the details of arrears of special road tax and token tax, along with permit number 720/R/2005 w.e.f. 12.5.2005, of the petitioner. That application was returned in original with an endorsement, that an amount of Rs.1,51,664/- was balance, outstanding against the company, as arrears of penalty/interest up to 31.3.2006. That application with endorsement was produced by respondent No.3, before respondent No.1. The petitioner deposited a sum of Rs.1,51,700/- on 7.4.2006, in respect of the penalty/interest. It had already

paid the special road tax and token tax upto 31.3.2006. No Dues Certificate was issued by the DTO, Sangrur in favour of the petitioner. Despite the payment of taxes referred to above, made by the petitioner, respondent No.1 cancelled, its road permit, by taking the view, that it was defaulter in payment of taxes. That order was challenged by way of filing C.W.P. No. 10692 of 2006 by the petitioner. The order dated 12.7.2006 (Annexure P-5) was quashed by this Court, and the case was remanded to respondent No.1, Appellate Authority, for deciding the same afresh. Respondent No. 1, vide order dated 14.2.2007 (Annexure P-7) again proceeded to cancel the route permit granted, in favour of the petitioner, only on the ground, that the Managing Partner of the petitioner-firm, by executing Special Power of Attorney, in favour of Amardeep Singh, transferred the permit, along with bus. It was stated that the appeal was filed by respondent No. 3 on 20.4.2005, whereas, the Special Power of Attorney was executed by Gurnaib Singh, Managing Partner of the petitioner, on 16.5.2005. The mere fact, that during the pendency of the appeal, special power of attorney was given by Gurnaib Singh to Amardeep Singh, did not, in any way, justify the inference, that it was a case of transfer of permit. It was further stated that even after the execution of the said power of attorney, the Managing Partner of the petitioner-firm, made an application on 15.9.2006, under his signatures, to respondent No.2, for the extension of route permit, from half trip to one full trip. Accordingly, the prayer referred to in para , was made.

4. The stand taken by respondent No.2, in the written statement, was to the effect, that the petitioner had got no case to invoke the writ jurisdiction of this Court.

5. Respondent No.3, in its written statement, pleaded that

the writ petition was not maintainable. It was stated that while granting the permit, in favour of the petitioner, on the route in question, respondent No.2, altogether ignored the superior claim of the answering respondent and treated the grant of permit as largesse to be equitably divided amongst the applicants. It was further stated that respondent No.1 cancelled the permit granted in favour of the petitioner by respondent No.2, as Gurnaib Singh, Managing partner of the petitioner-firm, had executed the special power of attorney, in favour of Amardeep Singh, transferring the vehicle, as also the permit. It was further stated that even other powers were given to the special attorney, by the Managing partner of the petitioner, with regard to the permit, in question, which clearly amounted to relinquishment of interest, by the petitioner, in favour of the special attorney. The filing of the earlier writ and disposal thereof, was admitted. It was further stated that the order dated 14.2.2007 (Annexure P-7) of respondent No.1, was legal and valid.

6. We have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

7. There is, no dispute, about the factum,that the permit, in question, was granted, in favour of the petitioner, by respondent No.2, but was cancelled by respondent No.1, vide order dated 14.2.2007(Annexure P-7). The learned Counsel for the petitioner, at the very outset, vehemently contended that respondent No.1, was completely wrong, in coming to the conclusion, that by executing special power of attorney (Annexure R-3/1) by Gurnaib Singh son of Bachan Singh, Managing Partner of the petitioner-firm, in favour of Amardeep Singh son of Karnail Singh, resident of Ballowal Distt. Ludhiana, he virtually transferred the permit, as also the

bus, in his favour, and vested him with all powers, to deal with the same. He further submitted that the said power of attorney was executed by Gurnaib Singh, Managing Partner, in favour of Amardeep Singh, in respect of the permit in question, just with a view to properly manage the route, and there was no transfer of the permit, as also the bus. He further submitted that even after the execution of the said power of attorney, Gurnaib Singh, moved an application dated 15.9.2006, before respondent No.2, for the extension of route, in question, which clearly revealed that he had not transferred the permit and the bus, in favour of Amardeep Singh, and was dealing with the same, on behalf of the petitioner-partnership firm. The submission of the learned Counsel for the petitioner, in this regard, does not appear to be correct.

8. The contents of the special power of attorney dated 16.5.2003 (Ex. R3/1) are extracted as under:-

> *"1. That my power of attorney is authorized to appear in my name on my behalf in all meetings.*
> *2. He is authorized to appear and do correspondence with all Departments including Transport*
> *3. He is authorized to sell the Bus receive sale consideration and issue receipt.*
> *4. He can stand guarantee anywhere.*
> *5. He is authorized to make joint application for the transfer of Bus alongwith permit.*
> *6. He is authorized to appear in all Courts.*
> *7. He is authorized to appear before the S.T.C. regarding joint application as well as regarding the modification of the route.*
> *8. He can take the Bus on superdari and appear and settle all challans.*
> *9. He can sign vakalatnama and engage counsel.*

10. He is authorized to open Bank account operate the same and sign the cheques.

11. He can sign all the necessary documents.

12. He can appear in the Police Station.

13. He can appear before the Lok Adalat settle the dispute and can further appoint attorney.

14. That this power of attorney is irrevocable.

15. He is authorized to take loan from the Bank.

16. He is competent to appear before the Accident Claims Tribunal.

17. He can sign all documents and can surrender the permit.

18. He can do all other acts, deeds and things which I am competent to do this power of attorney is executed on 16.5.2003."

9. The plain reading of the said special power of attorney, clearly goes to show that vide clause 3 of the same, the special attorney was given a right to sell/dispose of the bus, in question, receive the sale consideration and issue receipt. Vide clause 5, the special attorney, was authorized to make joint application, for the transfer of the bus, along with permit. Vide clause 7, the special attorney, was authorized to appear before the S.T.C. regarding the modification of the route. Vide clause 14, the special power of attorney was made irrevocable. Vide clause 15, the special attorney was authorized to take loan from the Bank. Vide clause 17, the special attorney was authorized to sign all the documents and surrender the permit.

10. The perusal of the special power of attorney, therefore, does not go to show that it was only executed, in favour of Amardeep Singh to manage the route. Therefore, in essence, the Managing Partner of the petitioner-firm, virtually parted with the permit, and the bus, in favour of Amardeep Singh, under the veil of execution of special power of attorney,

and was not in a position to operate against the permit, in question on the route. Respondent No.1, therefore, was right in holding that the petitioner was not in a position to provide efficient and complaint free bus service to the travelling public, on the route. Since, the petitioner was found to be not interested, in the permit, which was granted, in its favour, by virtually transferring the same, as also the bus, in favour of one Amardeep Singh, by executing the special power of attorney, the Tribunal, was, thus, right in cancelling the permit, granted in its favour. No fault, therefore, could be found with the order dated 14.2.2007 (Annexure P-7) passed by respondent No.1. The contention of the learned Counsel for the petitioner is accordingly rejected.

11. The mere fact that Gurnaib Singh moved an application on 15.9.2006, under his signatures, for the extension of route permit, in question, did not mean, that he had not parted with the permit, and the bus, in question, in favour of Amardeep Singh, by way of executing the special power of attorney. Since the special power of attorney (Ex. R3/1) was irrevocable, the special attorney, could move an application before respondent No.2, that he be permitted to withdraw the application submitted by Gurnaib Singh, Managing Partner, for the extension of route, on the strength of the aforesaid attorney. Moving an application by Gurnaib Singh, for the purpose aforesaid, therefore, did not make any difference. The contention of the learned counsel for the petitioner, therefore, being without merit, must fail, and the same stands rejected.

12. The learned Counsel for the petitioner, further contended that the permit could be transferred only in accordance with the provisions of section 82 of the Motor Vehicles Act, 1988. He further contended that

since the permit and the bus were not transferred by the petitioner there was, therefore, no occasion, on the part of respondent No.1, to cancel the same in appeal. The contention of the learned counsel for the petitioner does not appear to be correct. The permit and the bus were virtually transferred by the petitioner, without the permission of the transport authority, and, thus, it violated the provisions of Section 82 of the Act. While deciding the appeal, respondent No.1, was required to adjudicate upon the claims of the parties before it. The Appellate Authority, was right in coming to the conclusion that since the Managing Partner of the petitioner had executed the irrevocable power of attorney(Ex. R3/1), which was a veil on the transaction, but in fact, it virtually amounted to transferring the bus and the permit, in favour of Amardeep Singh, it (petitioner) could not provide efficient and complaint free transport service, on the route, to the general public. It, thus, rightly set aside the order dated 30.12.2004 of the Regional Transport Authority, and cancelled the permit, already granted, in favour of the petitioner, by respondent No. 2. There was, therefore, no legal impediment, in the way of respondent No.1, to cancel the permit, already granted, in favour of the petitioner, for the reasons recorded hereinbefore. The contention of the learned Counsel for the petitioner, in this regard, being without merit is rejected.

13. In view of the reasons recorded hereinbefore, we are not inclined to interfere with the order dated 14.2.2007(Annexure P-7) of respondent No.1, in exercise of the jurisdiction, under Article 226 of

the Constitution of India. Resultantly, the writ petition is dismissed with no order as to costs.

(SHAM SUNDER)
JUDGE

(J. S. KHEHAR)
JUDGE

November 17, 2007
archana